



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT WHEELER AND JO-ANNA
RODRIGUEZ-WHEELER,

Plaintiffs,

-against-

CITIGROUP, CITIBANK, CITIMORTGAGE
AND CITIFINANCIAL, MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
MERSCORP,

Defendants.
-----X

KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE

MEMORANDUM AND ORDER

11 Civ. 4721 (KNF)

Based on the defendants' challenge to the plaintiffs' assertion that the court has jurisdiction based on diversity of citizenship (Docket Entry No. 123), on December 21, 2012, the Court directed the plaintiffs to submit evidence establishing that diversity jurisdiction exists, the defendants to respond and the plaintiffs to reply (Docket Entry No. 141). The parties have filed their respective submissions. In their reply,

Plaintiffs acknowledge that lack of complete diversity exists among the parties as plead in the Third Amended Complaint but that this pleading defect can be cured in short order by removing all of the Citi Defendants except Citibank, a national association whose mortgage unit also named "CitiMortgage" was engaged in securitizing the Plaintiff's [sic] mortgage loan.

"Rule 21 [of the Federal Rules of Civil Procedure] invests district courts with authority to allow a dispensable nondiverse party to be dropped at any time," as long as "the dismissal of a nondiverse party will [not] prejudice any of the parties in the litigation." Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 832-38, 109 S. Ct. 2218, 2222-25 (1989). Since no party made

any arguments respecting severing the non-diverse parties from the action, pursuant to Rule 21, it is ORDERED that:

- (1) on or before February 14, 2013, the plaintiffs shall serve and file a memorandum of law addressing whether: (a) the nondiverse parties are dispensable, and (b) prejudice will attend any party perforce of the dismissal of nondiverse parties;
- (2) on or before February 28, 2013, the defendants shall serve and file a responsive memorandum of law; and
- (3) on or before March 11, 2013, any reply may be served and filed by the plaintiffs.

The parties are reminded that applications to enlarge time will not be entertained by the Court.

Dated: New York, New York
January 31, 2013

SO ORDERED:



KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE